SUPREME COURT, U. S.

FILED

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MICHAEL RODAK, JR., CLERK

No. 73-1191

In the Supreme Court of the United States

OCTOBER TERM, 1973

JOSEPH M. HOURIHAN, PETITIONER

v.

HAROLD DAKIN, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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We invite the Court's attention to the following facts which demonstrate that the petition for a writ of certiorari was filed out of time. The judgment of the court of appeals (Pet. App. 17) was entered on October 16, 1973. The time for filing a petition for a writ of certiorari was not extended, and, accordingly, the 90-day period provided by 28 U.S.C. 2101(c) for petitioning in civil cases expired on January 14, 1974. The petition was filed on February 4, 1974.

Since the time limit specified by 28 U.S.C. 2101(c) is jurisdictional, the petition should be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

MARCH 1974.

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